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8 UNITED STATES DISTRICT COURT
9 Northern District of California
10 San Francisco Division

11 STEVEN NGO and MONICA
12 WONG-NGO, No. C 14-00754 LB
13 Plaintiffs, ORDER (1) GRANTING
14 v. DEFENDANT'S APPLICATION TO
15 CASONDRA TSHIMANGA, PROCEED *IN FORMA PAUPERIS*
16 Defendant. AND (2) DIRECTING THE CLERK
17 / OF THE COURT TO REASSIGN THIS
18 INTRODUCTION ACTION TO A DISTRICT JUDGE
19 On January 24, 2014, plaintiffs Steven Ngo and Monica Wong-Ngo (collectively "Plaintiffs"),
20 brought an unlawful detainer action against defendant Casondra Tshimanga ("Ms. Tshimanga") in
21 the Alameda County Superior Court. *See* Notice of Removal, ECF No. 1 ¶ 1.¹ On February 19,
22 2014, Ms. Tshimanga, who is proceeding *pro se*, removed the action to federal court and filed an
23 application to proceed *in forma pauperis*. *See* Notice of Removal, ECF No. 1; IFP Application, ECF
24 No. 3. The court GRANTS Ms. Tshimanga's application to proceed *in forma pauperis*, ORDERS
25 the Clerk of the Court to reassign the action to a district judge, and RECOMMENDS that the
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¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 newly-assigned district judge remand the action to the Alameda County Superior Court.

2 STATEMENT

3 Plaintiffs allege that they own the property at 20949 Chester St., Castro Valley, California.
4 Complaint, ECF No. at 1 at 5. Ms. Tshimanga agreed to rent Plaintiffs' property on April 1, 2013
5 and to pay them \$1,275 in rent each month. *See id.* Plaintiffs allege that Ms. Tshimanga owes
6 \$3,825.00 in unpaid rent for the months of November and December 2013 and January 2014. *Id.*,
7 ECF No. 1-1 at 1-2; Notice to Quit, ECF No. 1-1 at 3.

8 As a result of Ms. Tshimanga's failure to promptly pay the rent agreed upon, Plaintiffs served
9 Ms. Tshimanga with a three-day notice to pay rent or quit on January 8, 2014. Complaint, ECF No.
10 1-1 at 1; Notice to Quit, ECF No. 1-1 at 3-4. Plaintiffs then filed the instant unlawful detainer action
11 in Alameda County Superior Court on January 24, 2014. Complaint, ECF No. 1 at 5. Plaintiffs seek
12 all unpaid rent due and damages of \$42.50 for each day that Ms. Tshimanga remains in possession
13 of the property from February 5, 2014 until the entry of judgment, along with the forfeiture of the
14 lease agreement and all of their attorney's fees and costs. *Id.*, ECF No. 1-1 at 2. On January 31,
15 2014, Ms. Tshimanga answered Plaintiffs' unlawful detainer. Answer, ECF No. 1-1 at 8-10. She
16 then removed the action to federal court on February 19, 2014, alleging federal-question jurisdiction.
17 Notice of Removal, ECF No. 1 ¶ 9.

18 ANALYSIS

19 I. MS. TSHIMANGA'S APPLICATION TO PROCEED *IN FORMA PAUPERIS*

20 As an initial matter, the court notes that Ms. Tshimanga filed an application to proceed *in forma*
21 *pauperis* on February 19, 2013. IFP Application, ECF No. 3. Upon consideration of Ms.
22 Tshimanga's application, the court **GRANTS** her application.

23 II. FEDERAL QUESTION JURISDICTION DOES NOT EXIST

24 A defendant in state court may remove an action to federal court when the question arises under
25 federal law.² 28 U.S.C. § 1331. It is the removing defendant's burden to prove the basis for federal
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28 ² District courts have original jurisdiction over cases that arise under the law of the United
States. U.S. Const. art. III, § 2, cl. 1.

1 jurisdiction. *Shizuko Nishimoto v. Federman-Bachrach & Assocs.*, 903 F.2d 709, 712 (9th Cir. 2
2 1990). If, after a court's prompt review of a notice of removal, "it clearly appears on the face of the 3
3 notice and any exhibits annexed thereto that removal should not be permitted, the court *shall* make 4
4 an order for summary remand." 28 U.S.C. § 1446(c)(4) (emphasis added). Removal jurisdiction 5
5 statutes are strictly construed against removal. *Shamrock Oil & Gas Corp. v. Sheets*, 313 U.S. 100, 6
6 108 (1941); *Takeda v. Northwestern Nat'l. Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985).

7 The "well-pleaded complaint" rule requires a federal question to be presented on the face of the 8
8 plaintiff's complaint at the time of removal for federal-question jurisdiction to exist. *Metropolitan 9
9 Life Insurance Co. v. Taylor*, 481 U.S. 58, 63 (1987); *Duncan v. Stuetzle*, 76 F.3d 1480, 1485 (9th 10
10 Cir. 1996). An actual or anticipated federal defense is not sufficient to confer jurisdiction. 11
11 *Franchise Tax Bd. of California v. Construction Laborers Vacation Trust*, 463 U.S. 1, 10 (1983); 12
12 *Hunter v. Phillip Morris USA*, 582 F.3d 1039, 1042-43 (9th Cir. 2009). However, a plaintiff may 13
13 not defeat removal by omitting necessary federal questions from his or her complaint. *Franchise 14
14 Tax Bd. of California*, 463 U.S. at 22.

15 In this action, Plaintiffs allege a single claim against Ms. Tshimanga for unlawful detainer. 16
16 Unlawful detainer claims do not arise under federal law and, without more, the court lacks federal- 17
17 question jurisdiction. *See, e.g., GMAC Mortg. LLC v. Rosario*, No. C 11-1894 PJH, 2011 WL 18
18 1754053, at *2 (N.D. Cal. May 9, 2011); *Fed. Nat'l Mortg. Assoc. v. Lopez*, No. C 11-00451 WHA, 19
19 2011 WL 1465678, at *1 (N.D. Cal. Apr. 15, 2011); *Wescom Credit Union v. Dudley*, No. CV 20
20 10-8203 GAF (SSx), 2010 WL 4916578, at *2 (C.D. Cal. Nov. 22, 2010).

21 Ms. Tshimanga nonetheless assert that the court has federal question jurisdiction because 22
22 Plaintiffs violated the Fair Housing Amendments Act ("FHA"), 42 U.S.C. § 3601, and the 23
23 Americans with Disabilities Act, as amended by the ADA Amendments Act (collectively "ADA"), 24
24 42 U.S.C. § 12101 et seq. Notice of Removal, ECF No. 1 ¶ 10. These assertions, however, are 25
25 federal defenses which, regardless of their merit, cannot provide this court with federal question 26
26 jurisdiction. *Franchise Tax Bd. of California*, 463 U.S. at 10; *Hunter*, 582 F.3d at 1042-43. 27
27 Accordingly, federal question jurisdiction does not exist.

1 **III. DIVERSITY JURISDICTION DOES NOT EXIST**2 Even though federal question jurisdiction does not exist, the court considers whether Ms.
3 Tshimanga may invoke diversity jurisdiction.4 Federal courts have diversity jurisdiction where the opposing parties are citizens of different
5 states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a). Furthermore, removal
6 is impermissible if any defendant is a citizen of the state in which the action is brought (even if the
7 opposing parties are citizens of different states). *See* 28 U.S.C. § 1441(b)(2).8 Here, the amount of damages at issue does not come close to reaching the \$75,000 threshold
9 amount. In addition, Ms. Tshimanga is a citizen of California, so she cannot remove the action from
10 California state court. Accordingly, diversity jurisdiction does not exist, either.11 **CONCLUSION**12 Based on the foregoing, the court **GRANTS** Mr. Tshimanga's application to proceed *in forma*
13 *pauperis*, **ORDERS** the Clerk of the Court to reassign this action to a district judge, and
14 **RECOMMENDS** that the newly-assigned district court judge remand the action to Alameda County
15 Superior Court.16 Any party may file objections to this Report and Recommendation with the district judge within
17 fourteen days after being served with a copy. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b);
18 N.D. Cal. Civ. L.R. 72. Failure to file an objection may waive the right to review of the issue in the
19 district court.20 **IT IS SO ORDERED.**

21 Dated: March 11, 2014



22 LAUREL BEELER
23 United States Magistrate Judge
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